

APPENDIX A.

Order.

United States Court of Appeals, for the District of Columbia Circuit, September Term, 1966, Civil 793-67.

Washington Metropolitan Area Transit Commission, Appellant, No. 20,975.

Washington Sightseeing Tours, Inc., Appellant, No. 20,976.

Blue Lines, Inc., and White House Sightseeing Corp., Appellants, No. 20,977.

D.C. Transit System, Inc., Appellant v. Universal Interpretive Shuttle Corporation, (a California corporation), Appellee, No. 20,978.

Before: Fahy, Senior Circuit Judge, and Danaher and Robinson, Circuit Judges, in Chambers.

Whereas a majority of the court are of the opinion that the various relevant statutory provisions, construed in relation one to the other, especially in view of the physical location of the Mall in the Metropolitan area of the District of Columbia, do not afford authority to the appellee Universal Interpretive Shuttle Corporation validly to engage in such transportation for hire in the Mall area as is contemplated by the contract between the Secretary of the Interior and appellee dated March 17, 1967, more fully described in the complaint, without a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission authorizing such transportation, and

Whereas it is deemed that the interests of the parties and of the public would be better served by this prompt disposition of the appeals rather than to de-

lay decision pending the formulation and issuance of elaborating opinions, though each member of the court reserves the right to file later, in opinion or statement form, his more detailed reasons for his position.

The order of the District Court of the 1st day of May, 1967, dismissing the complaint and denying the petition for injunction and declaratory relief is reversed, and the cause is remanded so that appropriate further proceedings and relief consistent with this order may be granted.

It is so ordered.

Circuit Judge Robinson, being of opinion the order of the District Court should be affirmed, dissents.

APPENDIX B.

Opinion and Order.

United States District Court for the District of Columbia.

Washington Metropolitan Area Transit Commission, Plaintiff, and D. C. Transit System, Inc. Washington Sightseeing Tours, Inc., Blue Lines, Inc., White House Sightseeing Corp. Plaintiff-Intervenors v. Universal Interpretive Shuttle Corporation (a California corporation) Defendant. Civil Action No. 793-67.

1. The Proceedings

This is an action for an injunction and for declaratory relief.

The action was instituted by the Washington Metropolitan Area Transit Commission (hereinafter WMATC) to enjoin the defendant Universal Interpretive Shuttle Corporation (hereinafter Universal) from operating a so-called "Visitor Interpretive Shuttle Service" in the Mall area of the City of Washington, D. C. in its capacity as a concessionaire of the National Park Service of the Department of the Interior.

The D. C. Transit, Inc. (hereinafter D.C. Transit), Washington Sightseeing Tours, Inc., Blue Lines, Inc. and White House Sightseeing Corp. have intervened as parties plaintiff.

The United States was granted leave to file a representation of interest to present evidence, file briefs, and otherwise take part in the proceedings.

The hearing on an application for a preliminary injunction was consolidated with a hearing on the merits

pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. The consolidated hearing was conducted April 25 and 26, 1967.

2. *The Fact Situation*

The central Mall area of the City of Washington is included within the National Park System which is administered by the National Park Service of the Department of the Interior. The Mall is bounded on the north by the White House, on the east by the Grant Memorial, on the south by the Jefferson Memorial, and on the west by the Lincoln Memorial. Because it contains and is flanked by many points of historical, educational, aesthetic and patriotic importance it is a focal point of tourist interest in the Federal City.

It has been estimated that the number of visitors to the Mall area exceeded 12 million in 1965. The National Park Service expects the number to increase progressively in the coming years.

To increase the enjoyment and appreciation of the people visiting the Mall area, in the Fall of 1966 the Secretary of the Interior instituted, on an experimental basis, a so-called "interpretive shuttle service" to operate within the Mall area and to move visitors through the Mall to the various points of interest. The experiment was deemed a success, and accordingly the Secretary decided to institute the service on a more permanent basis. To that end he prepared a prospectus (Washington Sightseeing Ex. 1) and solicited proposals from various private interests thought to be capable of supplying the type of service contemplated. Among the private interests invited to submit proposals, and which did submit proposals, was the intervenor D.C. Transit, and the defendant Universal.

Universal won the award, and the Secretary, acting through his Director of National Parks, thereupon negotiated a contract with Universal (U.S. Ex. 4). The contract bears date of March 17, 1967. It covers service to begin in 1967 and extending through December 31, 1967. But since a contract of such duration—roughly 10 years—is subject to a 60-day Congressional waiting period, the Director of the National Park Service entered into an interim agreement which would not require a Congressional waiting period in order to initiate the service as soon as possible to meet the demands of the tourist season of Spring 1967. By the interim agreement it was stipulated that the shuttle service would commence on May 1, 1967.

Section 2 of the basic contract authorizes the concessionaire Universal

"[T]o establish, maintain and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the City of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules and regulations of the Federal Government, and to use in connection therewith such Government-owned lands and improvements as may be designated by the Secretary."

The Contract requires Universal to station guides, wearing uniforms prescribed by the National Park Service, at designated points of national interest. These

stationary guides must be prepared to furnish information about the City and its facilities to any person regardless of whether they have paid for the visitors interpretive shuttle service.

The concessionaire is also required to operate trackless trains ("trams") bearing the National Park Service identification along a route lying wholly within the boundaries of the Mall area of National Capital Region, National Park Service, approximating 6.5 miles in total length.¹ Each tram is to be manned by a driver and tour guide wearing the uniforms prescribed by the National Park Service. As the tram proceeds along the prescribed route the guides are to give a narration to the visitors, the contents of which must be approved in advance by the Director of the National Parks. Each

¹The exact route to be followed by the Interpretive Shuttle Service is within the control of the Secretary. But as required by Section 2a of the Contract it will be "within the Mall area of the City of Washington." On the basis of the experiment conducted in 1966 it is generally assumed that the starting and ending point of the shuttle service will be in the Monument grounds of the shuttle service will be in the Monument grounds and that it will proceed as follows: East out of the Monument grounds through the Mall via Jefferson and Adams Drives to 2nd Street; briefly north on 2nd Street to connect with Washington Drive; west through the Mall by Washington and Madison Drives to the Monument grounds; south through Park land, on the west side of the Bureau of Engraving and Printing; then continuing to and encircling the Jefferson Memorial; thereafter by way of Ohio Drive and 23rd Street to Lincoln Memorial; passing between the Reflecting Pool and the Memorial; then via Beacon Drive to Constitution Avenue and east to the Ellipse; circling the Ellipse and returning through the Monument grounds to the starting point. This route according to the official map which was introduced as U. S. Exhibit No. 6 will require the vehicles to cross 14th, 7th, and 4th Streets and proceed briefly on 2nd Street. Otherwise the tour will be entirely within the Park grounds. It should be noted, however, that Title 8, Section 144 of the D. C. Code specifically authorizes the passage by Park authorities over the D. C. public streets for purposes of going from one section of Park land to another.

tram is required to stop at 11 designated points of interest.

Two basic types of interpretive tour service are contemplated by the Contract: (1) a "round trip" interpretive tour originating and terminating at the same point, and (2) a service whereby passengers can commence the narrated tour, proceed to a given point of interest, debark, remain at that point of interest and later join another tram at that point and continue the narrated tour. The interpretive function is by the terms of the contract "a prime consideration" (Sec. 6(c)). Every phase of the activities of Universal is to be under close and continuous regulation by the National Park Service, including the type and number of mobile units to be utilized, rates, routes, hours of service, days of service, schedule of trips, and content of narration.

The Secretary prescribes the manner in which the accounting records of Universal shall be maintained. Both the Secretary and the Comptroller General of the United States have access to and the right to examine any of the pertinent books, documents and records of Universal. Universal will be required to carry insurance in amounts approved by the Secretary against losses by fire, public liability, employee liability and other hazards. The United States of America must be named as co-insured in all liability policies. Performance bonds may be required by the Secretary in his discretion. The United States will have a first lien on all assets of Universal utilized in the visitors interpretive shuttle service.

Shortly after the execution of the interim agreement contemplating the initiation of service on May 1, 1967, the plaintiff WMATC notified Universal that the pro-

posed service would be subject to the jurisdiction of WMATC and that a certificate of necessity and convenience would have to be awarded by WMATC before Universal could operate.

Universal replied in part as follows:

"Prior to entering into the contract of March 24, 1967, we were advised that in the opinion of the Department of the Interior the Interpretive tour service required by the contract would be subject only to the requirements imposed by the United States of America, acting in this behalf by the Secretary of the Interior through the Director of the National Park Service. Therefore, Universal Interpretive Shuttle Corporation respectfully declines to apply for a certificate of convenience and necessity from the Washington Metropolitan Area Transit Commission at this time."

This action followed.

3. *The Respective Claims*

The claims of the respective parties are briefly these: WMATC asserts that under the terms of the Compact by which it was created, no one not specifically excepted by the terms of the Compact may engage in the transport of passengers for hire within the Metropolitan area of Washington without first obtaining a certificate of necessity and convenience from WMATC; that the National Park areas of the District of Columbia are within the geographical area, controlled transportation-wise by WMATC; that the intended operations of the defendant as a concessionaire of the National Park Service are not exempted by terms of the Compact; and that the defendant accordingly must seek

a certificate of convenience and necessity from WMATC.

D. C. Transit adopts the WMATC argument, and additionally asserts that the proposed service by Universal will constitute transportation of persons for hire on a scheduled service over a fixed route which will traverse portions of D. C. Transit's regular routes and substantially duplicate its regular services; that such duplication of service will deprive D. C. Transit of substantial revenues; that such services will be derogatory of the protection afforded by the franchise granted to D. C. Transit by Congress (70 Stat. 598, 1956). They also assert that they run charter and sightseeing services which will be substantially affected by the projected operation.

The other intervenors do not operate regularly scheduled services. They operate under certificates of convenience and necessity from WMATC for irregular service such as charter and sightseeing. Under these certificates they run sightseeing trips to and through the Mall and to the various points of interest. They too adopt the position of WMATC and assert possible loss of revenue as a result of the operation of the prospective services.

The defendant Universal and the United States take the position that the Mall is a National Park area under the exclusive jurisdiction of the Department of Interior; that the Compact did not effect a cession of jurisdiction within that area to WMATC; that the contemplated service is not embraced within the terms of the Compact; and that in any event the services proposed to be rendered will constitute a governmental operation, which is exempt from the coverage of the Compact by express exception.

4. *Discussion*

There has never been any question, and it is not disputed in this case, but that the Secretary of Interior by authority of Congress has been vested with exclusive jurisdiction over the maintenance and operation of all national parks and monuments (16 U.S.C. 1).

This exclusivity of jurisdiction has been specifically extended to any national park area within the District of Columbia by D.C. Code 8-108 et seq.

Further, in the maintenance and operations of the Park System the Secretary of Interior has been accorded the power to contract for services and accommodations in the Park areas and to set the rates therefor (16 U.S.C. 17(b)). And, in that connection, the Secretary has been directed to encourage private concessionaires to provide the services and facilities when practicable (16 U.S.C. 20(a)).

WMATC would challenge this exclusive jurisdiction urging in substance that when the three political bodies—the States of Virginia and Maryland and the District of Columbia—entered into a Compact creating WMATC, and when Congress consented to that Compact and suspended the application of certain U. S. Laws which theretofore had been applicable to the transit situation, exclusive jurisdiction was vested, in WMATC over any and all "transportation for hire" in the Metropolitan area, even interpretive shuttle services in the park areas, in derogation of the jurisdiction of the Secretary of Interior.

Analysis of the consent legislation and of the Compact and underlying purposes of the Compact will not support this position.

The provisions of the Compact which are relevant to the issues in this case are these:

“Title II

Article XII

“1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

* * * * *

“(2) Transportation by the Federal government, the signatories hereto, or any political subdivision thereof;

* * * * *

“2. As used in this Act—

(a) The term ‘carrier’ means any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance.

* * * * *

“4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation;”

A copy of the pertinent provisions of the consent legislation (O.L. 86-794, Sept. 15, 1960) is attached hereto as Appendix A.

It will be noted that in the preamble to the consent legislation there are not less than four references to “mass transit” within the Metropolitan area of Wash-

ington. It will be further noted that in the enacting language of Section 3 by which Congress suspended the applicability of certain laws of the United States, it suspended only those laws which were inconsistent with and in duplication of the provisions of the Compact. And still further it will be noted that the suspension applied to only such laws as related to or affected transportation *under the Compact*. It then went on to provide that

“[N]othing in this Act or in the Compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities.”

All of the foregoing statutory material must be viewed and construed in the light of the circumstances under which the Compact was brought into play. The following excerpt from House Report No. 1621, accompanying House Joint Resolution 402 succinctly states the situation which existed and which was projected to exist justifying the need for the Compact (pp. 5-6).

“According to testimony adduced at the hearings the Washington Metropolitan area has experienced a rapid rate of growth in the post-war years (hearings cited supra, pt. 1, pp. 47-48). Except for relatively moderate growth in the District of Columbia, this growth has occurred in the Virginia and Maryland counties. This population growth has been accompanied by a physical expansion of the urbanized area. The increase in the

number of automobiles has been even at a greater rate. It is estimated that the number of automobiles in the metropolitan area doubled in the 7-year period between 1948 and 1955 (transportation plan, National Capital Region (1959) p. 24). The growth in population, automobiles, and physical area is continuing.

"These changes have been accompanied by an increasing dependence on the private automobile and a decreasing patronage of public transit (transportation plan, cited supra pp. 12, 24). As a result, traffic has become a major problem of overgrowing proportions. At the present time, the population of the area stands at slightly more than 2 million, whereas it was approximately 1,850,000 in 1955 (transportation plan, supra pp. 2, 16). It is estimated that the population will increase to 2,400,000 by 1965, and 3 million by 1980 (transportation plan, supra p. 16). This projected growth, superimposed upon the present congestion of traffic, clearly demonstrates the need for remedial action.

"After 4 years of study and work, the National Capital Planning Commission and the National Capital Regional Planning Council, on July 1, 1959, issued its transportation plan for the National Capital region. This plan contemplates a balanced system of transportation providing for private automobile traffic and a system of mass transit consisting of a combination of rail and express bus service.

"The transportation plan proposes that the development of the transportation system take place

in three stages. As the first step, then plan recommends that the immediate action be taken to improve the present public transit service by centralizing regulation of existing privately owned transit on a regional basis to overcome the barriers imposed by jurisdictional boundary lines. This is the function of the instant compact.

* * * * *

"The transportation plan points out that there is no existing machinery of Government capable of handling on a regional basis the problems presented in each of the three stages of development and that adequate governmental machinery must be brought into being. The transportation plan recommends the Washington metropolitan area transit regulation compact as a suitable means of handling the first stage problem of improving the present public transit service.

* * * * *

"Thus, the function of the instant compact is to improve transit service offered by the existing privately owned transit companies through co-ordinated regulation and improvement of traffic conditions on a regional basis. The transportation plan does not require the elimination of privately owned and operated carriers, but anticipates their continued existence with the possibility that such carriers may enter into agreements with the subsequent proprietary agencies to operate the publicly owned facilities. Thus, the regulatory functions to be performed by the subject compact are not only required presently, but will be required as long as private transit continues to operate in the metropolitan area."

It is obvious from the foregoing material that when the Compact was brought into being it was designed primarily to regulate "mass transit" of commuter traffic between the highly urbanized neighboring areas in Maryland and Virginia and the Federal City over the customary public routes generally followed by scheduled bus lines. There is nothing in the Compact or the history of the Compact which would hint that it was intended to limit the exclusive jurisdiction of the Secretary of the Interior to maintain and operate the Park enclave, and if he so desired, to run a tram within the Park enclave for the edification of visitors. The plaintiff and the plaintiff-intervenors carefully emphasize the words "transportation for hire" and "Metropolitan area." They carefully gloss over the references to "mass transit" and the limiting language of the Compact itself confining its impact to transportation "within the meaning of the Compact." It is the opinion of this Court that the transportation to be provided by the Secretary incidental to his educational campaign and to be operated within an enclave over which the Secretary has exclusive jurisdiction is clearly not transportation *under the Compact*.

This opinion is bolstered by the fact that the Court can find no inconsistency with or duplication of the statutes conferring exclusive jurisdiction over the Parks to the Secretary and the Compact regulating mass transit thus requiring a suspension of the statutes under which the Secretary operates. It is interesting to note, and it should be emphasized, that the Report of the previously cited Hearings on the Compact contains a specific list of the laws which the Congress thought would be suspended during the operation of the

Compact, and that list does not contain any law or regulation under which the Secretary has exercised his jurisdiction over the D. C. Park System. Further, it should be noted that under the Compact the WMATC was granted that jurisdiction which had previously been possessed and exercised by the predecessor regulatory agencies operating within the Metropolitan area, namely, the Public Service Commission of Maryland, the Public Utilities Commission of the District of Columbia, the Corporation Commission of Virginia, and the Interstate Commerce Commission of the United States—and none of those entities ever pretended to exercise jurisdiction over the National Park areas.

Accordingly, this Court does not accord the WMATC any jurisdiction to require the Secretary or his agent to apply for a certificate of convenience and necessity for the projected operations.

Even if the Court were to accept the construction of the words "transport" and "transportation for hire" which are placed upon those words by the WMATC and plaintiff-intervenors, or could conceive of the possibility that the WMATC has some jurisdiction over the movement of people within this Government owned enclave, or that the Congress by its action in consenting to this legislation suspended the exclusive authority of the Director of the National Park Service, the Compact by its own terms clearly excepts transportation by the Federal Government. (Article XII, Sec. 2(a)).

The WMATC contends of course that the operation here proposed will be conducted by the defendant and not by the Government; that for the transportation to be "transportation by the Federal Government" it must

be conducted by the Government directly. As an example of a properly exempted service the WMATC cites the six-week test shuttle service in 1966.

The Supreme Court disposed of this argument in the case of *Yearsley v. W. A. Ross Construction Co.*, 309 U.S. 18 (1940) when it held that the acts of a contractor, authorized and directed to perform certain services for the Government, were the acts of the Government. In that case the defendant, a government contractor, was sued for damages on the ground that he had in the course of building dikes for the Government on the Missouri River produced erosion and washed away a portion of the plaintiff's land. The Supreme Court held that since the act of the contractor was authorized and directed by the United States it was the act of the United States and so relegated the plaintiff to a suit against the United States in the Court of Claims.

The concessionaire in this case stands on no different footing. Merely because he is a concessionaire and deriving his income from a percentage of the gross intake does not place him in a different class than the usual contractor. One need only read the contract between the Secretary and Universal to appreciate the high degree of control which the Secretary exercises over this concessionaire to remove him from the category of an independent operator. The WMATC argument on this score is accordingly rejected.

We turn now to the D. C. Transit claim that the proposed interpretive tour service would violate the protection guaranteed by Congress in the Act of July 24, 1956 (70 Stat. 598).

D.C. Transit relies upon Section 3 of its franchise which provides:

“No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established to operate in the District of Columbia without prior issuance of a certificate by the Public Utilities Commission of the District of Columbia. . . .”

Initially it is difficult to characterize the proposed operations of the shuttle service as proceeding over “a given route” on a “fixed schedule” when it is apparent from the contract with the defendant Universal that the Secretary has not designated a route, has not designated a schedule, and reserves the right to direct how the shuttle service shall be conducted at any given time. But wholly aside from that observation, it appears to the Court that D. C. Transit is over reaching when it claims Section 3 protection against this shuttle service. In our opinion, what Congress intended to give the D.C. Transit was protection in the operation of its day to day activities in the mass movement of the public of Washington, D. C. over the D. C. streets. What the Secretary is proposing to do is in no wise competitive with that fundamental function of the D.C. Transit System.

Apparently the D. C. Transit does operate some fixed routes from time to time through the Mall area for which it seeks specific permission from the Secretary of the Interior, thus recognizing his absolute control

over operations within that area. Those are bus commuter services rather than sightseeing services and would hardly be deemed competitive with the shuttle service as envisioned by the contract with Universal.

For the most part, however, the D. C. operations within the Mall area are conducted on a charter or sightseeing basis under the separate and unprotected authority of Section 6 of the D. C. Transit franchise, and with the permission of the Secretary of the Interior. This is true also of the other plaintiff-intervenors who operate irregular service on a charter or sightseeing basis. Conceivably and probably a competitive situation will exist to some extent between the sightseeing services offered by the D. C. Transit and the other plaintiff-intervenors and the shuttle system. But neither the D. C. Transit or the plaintiff-intervenors have cause to claim protection from this type of competition. D. C. Transit and the plaintiff-intervenors are permitted to use the Mall area by suffrage and only with the specific consent of the Secretary of the Interior. He could if he saw fit exclude them from the area entirely. *U.S. v. Gray Line Tours of Charleston*, 311 F.2d 779 (4th Cir. 1962). As a matter of fact, it is envisioned in the long range plan for the development of the Mall that all vehicular traffic will be excluded and that all present existing crossroads will become tunnels.

It seems to the Court that parties who enjoy the right to operate their sightseeing services within the

Mall area only at the sufferance of the Secretary of the Interior have no standing whatsoever to ask this Court to enjoin the Secretary from similar operations on his own account.

This opinion constitutes the findings of fact and conclusions of law of the Court.

In the light of such findings and conclusions, it is this 1st day of May, 1967.

ORDERED that the complaint is dismissed, and it is

FURTHER ORDERED that the petition for an injunction and for declaratory relief is denied.

H. F. Corcoran

Judge

APPENDIX C.

Contract No. 14-10-9-990-27

THIS CONTRACT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service; hereinafter referred to as the "Secretary", and Universal Interpretive Shuttle Corporation, a corporation organized and existing under the laws of the State of California; hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, the National Capital Parks area are under the exclusive charge and control of the Director of the National Park Service pursuant to the Act of June 1, 1898, as amended (D.C. Code, Section 8-108); and

WHEREAS, the number of visitors to the central Mall area exceeded twelve million in 1965 and is expected to progressively increase in coming years; and

WHEREAS, the visitor demands require that the Secretary provide increased expert interpretive service in order to properly discharge his obligations to the people of the United States, and it has been determined that such interpretation can best be provided in conjunction with a shuttle service; and

WHEREAS, the United States has not provided such necessary facilities and services and desires the Concessioner to establish and operate the same at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS, the establishment and maintenance of such facilities and services involve a substantial investment of capital and the assumption of the risk of operating loss, and it is therefore proper, in consideration of the obligations assumed hereunder and as an inducement to capital, that the Concessioner be given assurance of security of such investment and of a reasonable opportunity to make a fair profit; and

WHEREAS, it is the intention of the parties that any acts, policies, or decisions of the Secretary under this contract will be consistent with reasonable protection to the Concessioner against loss of its investment and against substantial increase in costs, hazards, and difficulties of its operations hereunder:

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-3); and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), and other laws supplemental thereto and amendatory thereof, the said parties, in consideration of the mutual promises herein expressed, covenant and agree to and with each other as follows:

SEC. 1. *Term of Contract.* (a) This contract shall be for and during the term from date of execution through December 31, 1977, except as it may be terminated as herein provided. The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of this contract for such stated periods as the Secretary may deem proper upon written application showing circumstances beyond its control warranting such relief.

(b) The granting of the term hereinbefore specified is conditioned upon the Concessioner furnishing equipment necessary to operate a trackless train system

to provide visitor interpretive shuttle service as required herein, at a cost of not less than \$500,000. Such equipment shall consist of:

Open-air type vehicles, each consisting of a self-propelled unit, with a passenger capacity of not less than 40, and a trailing unit with a capacity of not less than 43 passengers, the two units to be articulated. The equipment shall have the power capacity of speeds up to thirty (30) miles per hour fully loaded, with the capability of starting with a full load on a ten per cent (10%) upward gradient and to maintain a constant climb at a minimum of five (5) miles per hour. All units shall meet Interstate Commerce Commission and District of Columbia safety requirements. Each complete unit shall contain a sound amplification system, shall have solid panels in the passenger area, and an entrance and exit door with a locking device to prevent vehicle from moving while doors are open. The engine shall be equipped with a smog control device. The Concessioner shall submit plans and drawings of the equipment for approval by the Secretary within thirty (30) days after date of execution of this contract. After approval of the plans and drawings, the Concessioner shall provide the Secretary with such assurances that the equipment will be provided as contemplated herein, as the Secretary, in his judgment may require, in the form of a bond in an amount not to exceed the cost of furnishing the necessary equipment, or such other document as may be satisfactory to the Secretary. Sufficient equipment shall be provided to operate three trips per hour within four (4) months from the execution date of this contract, and sufficient

additional equipment to operate a total of twelve (12) trips per hour shall be provided within one year from such execution date.

In the event the Concessioner fails to provide the said equipment within the time allotted therefor, then this contract shall be for and during a term of one year from the date of execution, except as it may be terminated as herein provided. The time for furnishing the equipment will be extended by the Secretary if the Concessioner is subject to such circumstances or hazards beyond its control which renders meeting the schedule provided herein impossible, unrealistic, or inconsistent with reasonable protection to the Concessioner of its investment, with appropriate extension of the lesser term of this contract, if necessary, as may appear reasonable in the circumstances, and if the said equipment is furnished within such additional period of time as may be granted hereunder, then this contract shall be effective for the full term through December 31, 1977, hereinbefore granted, except as it may be terminated as herein provided.

SEC. 2. Services Authorized. (a) The Secretary authorizes the Concessioner, during the term of this contract, to establish, maintain, and operate a Visitor Interpretive Shuttle Service for the public within the Mall area of the city of Washington, National Capital Region, National Park Service, which service may include visitor interpretive service originating and terminating at the same point, with no passengers embarking or debarking en route, and such other types of service as may be approved by the Secretary, along such

routes as may be approved by the Secretary, on a year-round basis (except Christmas Day), under applicable laws, rules, and regulations of the Federal Government, and to use in connection therewith such Government-owned lands and improvements as may be designated by the Secretary. An unreasonable diminution by the Secretary of the services to be performed hereunder shall be deemed to be inconsistent with the Concessioner's reasonable opportunity to make a fair profit.

(b) It is understood and agreed that no other services or facilities are contemplated or authorized hereunder, except that the Concessioner may use temporary equipment approved by the Secretary in initiating service hereunder, pending delivery of the permanent equipment as described in Section 1 hereof, and that the Concessioner will:

(1) Man each vehicle with a driver and an interpreter, the duty of the latter being to provide interpretive information and services to visitors.

(2) Station an interpreter at such stops as may be required by the Secretary to provide information to visitors.

(3) Make such arrangements as may be necessary for administrative offices, equipment storage, shop facilities, and related purposes, provided, however, that the Secretary may permit the Concessioner to use such Government-owned lands and facilities as may be available for these purposes on a temporary basis for which a charge shall be made, pending the Concessioner completing arrangements for the use of other facilities for such purposes.

(4) Maintain standby equipment as may be necessary to maintain the approved schedule of trips in the event of breakdown of the regular equipment.

(5) Maintain emergency facilities and equipment as may be necessary to remove disabled equipment expeditiously from vehicular traffic routes.

SEC. 3. Equipment, Personnel, and Rates. (a)

The Concessioner shall provide, maintain, and operate the said equipment, facilities, and services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with an opportunity to make a fair profit on the total of its operations hereunder.

(b)(1) All rates and prices charged to the public by the Concessioner for services furnished hereunder shall be subject to regulation and approval by the Secretary, not inconsistent with an opportunity for the Concessioner to make a fair profit from the total of its operations hereunder. In determining fair profit for this purpose, consideration shall be given to the rate of return required to encourage the investment of private capital and to justify the risk assumed or the hazard attaching to the enterprise; the cost and current sound value of capital assets used in the operation; the rate of profit on investment and percentage of profit in gross revenue considered normal in the type of business involved; the financial history and

the future prospects of the enterprise; the efficiency of management; and other significant factors.

(2) Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable services furnished outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

SEC. 4. *Land and Improvements.* (a) The Secretary will assign for use by the Concessioner during the term of this contract, such pieces and parcels of land and government improvements as may be, in his judgment, necessary and appropriate for the operations authorized hereunder.

(b) The Secretary shall have the right at any time to enter upon any lands and improvements assigned hereunder for any purpose he may deem reasonably necessary for the administration of the area and the government services therein, but not so as to destroy or unreasonably interfere with the Concessioner's use of such lands or the improvements thereon.

(c) "Government improvements" as used herein, means the buildings, structures, fixtures, equipment, and other improvements upon the lands assigned hereunder, constructed or acquired by

the government and provided by the government for the purposes of this contract.

(d) The Secretary hereby grants to the concessioner the right to occupy and use such government improvements during the term and subject to the conditions of this contract.

(e) The Concessioner shall provide all necessary maintenance and routine repairs of such government improvements, provided that, if a government improvement is damaged by casualty or requires major repair or rebuilding, then the Concessioner shall not be obligated to repair or rebuild such improvement.

SEC. 5. Utilities. The Concessioner shall secure any utilities at its own expense which may be required for its operations hereunder from local available sources.

SEC. 6. Operational Terms and Conditions. The Concessioner shall conduct the operations authorized pursuant to this contract in accordance with the following terms and conditions:

(a) *Equipment.* (1) All equipment used by the Concessioner to provide the Visitor Interpretive Shuttle Service shall be satisfactory to the Secretary. Except as it may be determined by the Secretary, upon the request of the Concessioner, that a smaller unit will be suitable as additional equipment hereunder, the system shall consist of a trackless train type as specified in subsection 1(b) hereof. Any door in the equipment shall be provided with a locking device to prevent moving while doors are open. All vehicles shall meet Inter-

state Commerce Commission and District of Columbia safety requirements. It is understood and agreed, however, that substitute equipment, approved by the Secretary, may be used temporarily in initiating the service to be provided thereunder, and that in emergencies, the Concessioner may substitute temporarily for its regular vehicles, other equipment approved by the Secretary, provided, that such emergency periods shall be limited to ten (10) days unless further extended, in writing, by the Secretary. All equipment shall have the minimum power capacity of speeds up to 30 miles per hour fully loaded, and have the capability of starting with a full load on a ten per cent (10%) upward gradient and maintain a constant climb at a minimum of five (5) miles per hour.

(2) Sufficient equipment shall be furnished to operate three trips per hour within four months after the effective date of this contract, and sufficient additional equipment to operate a minimum of twelve (12) trips per hour, within one year from such date. Such additional equipment as may be necessary to meet the increasing needs of visitors, as determined by the Secretary, shall be furnished.

(3) All equipment used in providing the Visitor Interpretive Shuttle Service shall be maintained in such a manner as to provide full operating efficiency at all times and in a safe, clean, sanitary, and orderly condition, and periodic inspections of the equipment, particularly during periods of heavy use, may be made by the Secretary to assure the equipment is so maintained.

(b) *Schedule of Trips.* Because the Secretary has a continuing responsibility in regard to the Mall area, and pedestrian and vehicular traffic thereon, the hours of operation and number of trips per hour shall be subject to regulation and approval of the Secretary. The Visitor Interpretive Shuttle Service is to be available every day of the year with the exception of Christmas Day. The service is to be available between the hours of 9:00 a.m., and 10:00 p.m., from April 15 through Labor Day of each year, and between the hours of 9:30 a.m., and 5:00 p.m., the remainder of the year.

(c) *Interpretation.* Since the interpretive function is a prime consideration hereunder, it must at all times be of the highest quality and it shall be provided by qualified individuals, one of whom shall accompany each trip. In addition an interpreter shall be stationed at each stop as designated by the Secretary. The information on which the narration is based shall be furnished by the National Park Service, and the script shall be approved by the Secretary in advance.

SEC. 7. *Accounting Records and Reports.* (a) The Concessioner shall maintain such accounting records as may be prescribed by the Secretary. It shall submit annually as soon as possible, but not later than sixty (60) days after the 31st day of December, a report for the preceding year giving such information about its business and operations under this contract as may be prescribed by the Secretary, and such other reports and data as may be required by the Secretary. The Secretary

shall have the right to verify all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioner, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b) The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of the Concessioner and any subconcessioner have access to and the right to examine any of their pertinent books, documents, papers, and records related to this concession contract.

SEC. 8. *Opening Balance Sheet.* Within ninety (90) days of the execution of this contract, the Concessioner shall submit for the approval of the Secretary a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of such operations. That balance sheet shall be accompanied by a schedule describing the items sufficiently in detail to establish clearly their identity and respective values. The Secretary shall notify the Concessioner in writing of his approval or disapproval of the balance sheet within six (6) months after its receipt. If the balance sheet, as submitted, is disapproved, the Secretary shall set out in the notification of disapproval his findings upon which the disapproval is based. Within thirty (30) days, the Concessioner shall submit a revised opening balance sheet in

accordance with the findings of the Secretary. If no notice is given within the six (6) months period, the balance sheet, as submitted, shall be considered as having received the approval of the Secretary.

SEC. 9. *Franchise Fee.* (a) The Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of each year during the term of this contract a franchise fee for the privileges authorized herein, as follows:

(1) An annual fee for the use of any government-owned structures assigned to the Concessioner for the purposes of this contract, based on the value of the government-owned structure or structures provided, pursuant to the schedule, identified as "Exhibit A" attached to and made a part of this contract.

(2) In addition to the foregoing, a further sum equal to three per cent (3%) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b)(1) The term "gross receipts", as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from the interpretive shuttle service, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the area, and excluding gross receipts from cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank ac-

counts, income from investments, income from activities outside of the area, sales of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, provided that the amount excluded shall not exceed the amount actually due or paid governmental agencies.

(2) The term "gross receipts of subconcessioners" as used in subsection (b)(1) or this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the privileges conferred by subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever and the subconcessioners shall report the full amount of all such receipts to the Concessioner within 45 days after the 31st day of December of each year. The subconcessioners shall maintain an accurate and complete record of all items listed in subsection (b)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed pursuant to the preceding sentence in computing the franchise fee payable to the Secretary as provided for in subsection (1) of this section.

(c) In case of dispute as to the computation of franchise fees to be paid under this contract the determination of the Secretary, consistent with the provisions of this section, shall be final.

(d) Within sixty (60) days after the end of the 3rd, 5th, and 7th years of this contract, at the instance of either party hereto, the amount and character of the franchise fee provided for in subsection (a) of this section may be reconsidered and such franchise fee provisions inserted in lieu thereof as may be agreed upon between the parties hereto in a written supplemental agreement.

Sec. 10. Bond and Lien. The Secretary may, in his discretion require the Concessioner to furnish a bond in such form and in such amount as the Secretary may deem adequate, not in excess of ten thousand dollars (\$10,000). As additional security for the faithful performance by the Concessioner of all of its obligations under this contract, and the payment to the government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the government shall have at all times the first lien on all assets of the Concessioner within the area. In the event the title to the equipment to be furnished by the concessioner hereunder is vested in the concessioner's parent or affiliated corporation, any such arrangement shall be subject to the prior approval of the secretary. The owner of such equipment shall be required to agree that the equipment will be subject to all rights of the Secretary under this contract as if the equipment were owned by the concessioner, and will execute such further instruments or assurances as may, in the judgment of the Secretary, be necessary in order to effectuate the foregoing. No such arrangement shall be approved by the Secretary unless complete

title, without any outstanding security interests therein, is vested in such parent or affiliated corporation.

SEC. 11. Termination of Contract by Secretary.

In case of any substantial default or continued unsatisfactory performance by the Concessioner under this contract, the Secretary may terminate this contract by the following procedure:

- (a) The Secretary shall give to the Concessioner written notice specifying the particulars of the alleged default or unsatisfactory performance.
- (b) Not less than thirty (30) days after receipt by the Concessioner of such notice, the Secretary shall grant to the Concessioner an opportunity to be heard upon the charges.
- (c) Following such opportunity to be heard, the Secretary shall have power to determine whether there has been such a default or unsatisfactory performance.
- (d) If the Secretary shall decide that there has been such a default or unsatisfactory performance, he shall give to the Concessioner written notice of such decision specifying the particulars thereof.
- (e) If the Concessioner fails or refuses to remedy such default or unsatisfactory performance within such reasonable period of time as may be fixed by the Secretary, then the Secretary may declare this contract terminated upon such date or upon such contingency as he may deem proper to protect the public interest.

SEC. 12. Compensation for Concessioner's Personal Property.

- (a) If for any reason other than

for unsatisfactory condition of equipment, or expiration of the term upon December 31, 1977, or such later date as it may expire, the Concessioner shall cease to be authorized to conduct interpretive shuttle service authorized hereunder, or any of them, and thereafter such operations are to be conducted by a successor, whether a private person or any agency of the government, (1) the Concessioner will sell and transfer to the successor designated by the Secretary all property of the Concessioner used or held for use in connection with such operations; and (2) the Secretary will require such successor, as a condition to the granting of a permit or contract to operate, to purchase from the Concessioner such property, and to pay the Concessioner the fair value thereof. The fair value of merchandise and supplies shall be cost. The fair value of equipment shall be cost, including transportation charges, less straight line depreciation.

(b) To avoid interruption of service to the public upon the termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use for a period not to exceed six (6) months, by a temporary operator designated by the Secretary of the Concessioner's personal property, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall not be obligated to accept

an annual fee for the use of such property of less than the sum of the annual depreciation on such property, plus three per cent (3%) return on the book value of such property.

SEC. 13. Assignment or Mortgage. No transfer or assignment by the Concessioner of this contract or of any part thereof or interest therein, directly or indirectly voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing by the Secretary.

SEC. 14. Approval of Subconcession Contracts. All contracts and agreement proposed to be entered into by the Concessioner with respect to the exercise by other of the privileges granted by this contract shall be submitted to the Secretary for his approval prior to the effective date. In the event any such contract or agreement is approved the Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of each year a sum equal to fifty per cent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 9 of this contract.

SEC. 15. Preferential Right. (a) The Concessioner is granted a preferential right, not an exclusive or monopolistic right, to provide interpretive services in the Mall area of the character authorized hereunder. The Secretary will request the Concessioner to provide any additional services, of the same character to other centers of interest in the

Federal establishment as the Secretary may consider necessary or desirable. If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional services, the Concessioner shall be allowed sixty (60) days in which to prepare and present its case but, after consideration of the Concessioner's presentation and such hearings or testimony as the Secretary may consider appropriate, the decision of the Secretary in the premises shall be final. If, after such decision, the Concessioner declines or fails within a reasonable time to comply with the request or demand of the Secretary, then the Secretary may, in his discretion, authorize others to provide such services, but only upon terms and conditions substantially equivalent to those offered or allowed to the Concessioner.

(b) Nothing contained in this section or elsewhere in this contract shall be construed as prohibiting or curtailing operations conducted in the area by others now authorized or permitted by the Secretary to provide service therein for the public. This subsection shall include also the successors or assigns of such concessioners, when approved by the Secretary.

SEC. 16. *Insurance.* The Concessioner shall carry such insurance against losses by fire, public liability, employee liability, and other hazards as is customary among prudent operators of similar businesses under comparable circumstances. The United States shall be named as co-insured in all liability policies carried hereunder.

SEC. 17. *Concessioner's Employees.* (a) The Concessioner shall require its employees who come in direct contact with the public to wear a uniform, the type and design of which shall be approved by the Secretary, by which they may be known and distinguished as the employees of said Concessioner.

(b) Personnel selected for operating the equipment must have the capability of performing such duties in a safe and businesslike manner, and must be courteous, attentive, of high character, and well groomed at all times.

(c) Personnel selected to perform interpretive service shall be of the highest quality available to the Concessioner consistent with sound business practices of enterprises of the type authorized hereunder with qualifications satisfactory to the Secretary. They shall be trained in performing the service and thoroughly indoctrinated in the history in order that they may properly interpret the sites and answer questions before being assigned to serve the public. They shall conduct themselves in a creditable manner, and be courteous, patient, mannerly, and well groomed at all times. Their on-the-job performance shall be subject to periodic review by the Secretary.

SEC. 18. *Procurement of Goods, Equipment, and Services.* In computing net profits for any purpose of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies, or services from

sources controlled by or under common ownership with the Concessioner or by any other device.

SEC. 19. Nondiscrimination. (a) **EMPLOYMENT:** During the performance of this contract, the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, creed, color, ancestry, or national origin. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner state that all qualified applicants will receive consideration for employment without regard to race, creed, color, ancestry, or national origin.

(3) The Concessioner will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided

by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Concessioner's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Concessioner will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, That in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

(b) CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions (a)(1) through (7) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

(c) FACILITIES: (1) Definitions: As used in subsection 19(c) herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, creed, color, ancestry, or national origin; (ii) discriminating by segregation or other means against any person because of race, creed, color, ancestry, or national origin in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection 19(c) herein to be incorporated in all of its contracts or other forms of agreement for use of land made in pursuance of this agreement.

SEC. 20. *General Provisions.* (a) Operations under this contract shall be subject to all applicable laws of Congress and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated.

(b) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior; and the term shall include his duly authorized representatives.

(c) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom—but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at the city of Washington, D. C., this 29th day of May, 1967.

UNITED STATES OF AMERICA

By Harthon L. Bill

Acting Director, National Park Service

UNIVERSAL INTERPRETIVE

SHUTTLE CORPORATION

By Jay S. Stein

Vice President

Date 3/24/67

APPENDIX D.

Statutes Involved

I.

Pertinent parts of the Washington Metropolitan Area Transit Regulation Compact, as approved by Act of September 15, 1960, 74 Stat. 1031, D. C. Code, §1-1410 to 1-1416 (1961 ed.) are:

Public Law 86-794

86th Congress, H. J. Res. 402

September 15, 1960

JOINT RESOLUTION

Granting the consent and approval of Congress for the States of Virginia and Maryland and the District of Columbia to enter into a compact related to the regulation of mass transit in the Washington, District of Columbia metropolitan area, and for other purposes.

Whereas the regulation of mass transit service in the metropolitan area of Washington, District of Columbia, is divided among the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission; and

Whereas such divided regulatory responsibility is not conducive to the development of an adequate system of mass transit for the entire metropolitan area, which is in fact a single integrated, urban community; and

Whereas the Legislatures of Virginia and Maryland and the Board of Commissioners of the District of Columbia in 1954 created a Joint Commission to study, among other things, whether joint action by Maryland, Virginia, and the District of Columbia is necessary or desirable in connection with the regulation of

passenger carrier facilities operating in such areas and the provision of adequate, non-discriminatory and uniform service therein; and

Whereas said Joint Commission has actively participated in the mass transit study authorized by the Congress (Public Law 24 and Public Law 573, Eighty-fourth Congress), and in furtherance thereof said Joint Commission has negotiated the Washington Metropolitan Area Transit Regulation Compact, set forth in full below, providing for the establishment of a single organization as the common agency of the signatories to regulate transit and alleviate traffic congestion, which compact has been enacted by Virginia (ch. 627, 1958 Act of Assembly) and in substantially the same language by Maryland (ch. 613, Acts of General Assembly 1959); and

Whereas said compact adequately protects the national interest in mass transit service in the metropolitan area of the Nation's Capital and properly accommodates the National and State interests in and obligations toward mass transit in the metropolitan area: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the consent and approval of Congress is hereby given to the State of Virginia and Maryland and to the District of Columbia to enter into a compact, substantially as follows, for the regulation and improvement of mass transit in the Washington metropolitan area, which compact, known as the Washington Metropolitan Area Transit Regulation Compact, has been negotiated by representatives of the States and the District of Columbia and has been adopted by the State

of Virginia (ch. 627, 1958 Acts of General Assembly), and in substance by the State of Maryland:

"The States of Maryland and Virginia and the District of Columbia hereinafter referred to as signatories do hereby covenant and agree as follows:

[Text of Compact omitted]

Consent Legislation, §1

The consent and approval of Congress is hereby given to the States of Virginia and Maryland and to the District of Columbia to enter into a compact, substantially as follows, for the regulation and improvement of mass transit in the Washington metropolitan area, which compact, known as the Washington metropolitan area transit regulation compact, has been negotiated by representatives of the States and the District of Columbia and has been adopted by the State of Virginia (ch. 627, 1958 Acts of Assembly), and in substance by the State of Maryland.

Consent Legislation, §3.

That, upon the effective date of the compact and so long thereafter as the compact remains effective, the applicability of the laws of the United States, and the rules, regulations, and orders promulgated thereunder, relating to or affecting transportation under the compact and to the persons engaged therein, including those provisions of section 6(e) of the District of Columbia Traffic Act, 1925, as amended by the Act approved February 27, 1931 (46 Stat. 1426; Sec. 40-603(e), D.C. Code, 1951 edition), relating to the powers of the Public Utilities Commission of the District of Co-

lumbia and the Joint Board created under such section, is suspended, except as otherwise specified in the compact, to the extent that such laws, rules, regulations, and orders are inconsistent with or in duplication of the provisions of the compact: *Provided*, That upon the termination of the compact, the suspension of such laws, rules, regulations, and orders, if not theretofore repealed, shall terminate and such laws, rules, regulations, and orders shall thereupon again become applicable and legally effective without further legislative or administrative action: *Provided further*, That nothing in this Act or in the compact shall effect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities: *Provided further*, That nothing in this Act or in the compact consented to and approved hereby shall impair or affect the rights, duties, and obligations created by the Act of July 24, 1956 (ch. 669, 70 Stat. 598), granting a franchise to D.C. Transit System, Inc: *Provided further*, That the term "public interest" as used in section 12(b) of article XII, title 11 of the Compact shall be deemed to include, among other things, the interest of the carrier employees affected: *And provided further*, That nothing herein shall be deemed to render inapplicable any laws of the United States providing benefits for the employees of any carrier subject to this compact or relating to the wages, hours, and working conditions of employees of any

carrier, or to collective bargaining between the carriers of said employees, or to the rights to self-organization, including, but not limited to, the Labor-Management Relations Act, 1947, as amended, and the Fair Labor Standards Act, as amended. Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Utilities Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission.

Compact, Article I

ARTICLE I

There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties, cities and airport.

Compact, Article II

ARTICLE II

The signatories hereby create the "Washington Metropolitan Area Transit Commission," herein-after called the Commission, which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, and shall have the powers and duties set forth in this compact and such additional powers and duties as may be conferred upon it by subsequent action of the signatories. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein.

Compact, Article XII, §§ 1(a) and 4(a)

ARTICLE XII

Transportation Covered

1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

- (1) transportation by water;
- (2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;
- (3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce; if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;

(5) transportation performed by a common carrier railroad subject to Part I of the Interstate Commerce Act, as amended.

*Certificates of Public Convenience and Necessity;
Routes and Services.*

4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation . . .

II.

Relevant parts of other statutes.

Act of July 1, 1898, 30 Stat. 570 as amended, D.C. Code § 8-108:

The park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States.

Act of March 4, 1909, 35 Stat. 994 as amended, D.C. Code § 8-144:

The application of the rules and regulations prescribed prior to March 4, 1909, or that may be thereafter prescribed by the Director of the National Park Service, under the authority granted by sections 5-204, 8-108, 8-110, 8-127, 8-135 and 8-143, for the Government and proper care of all public grounds placed by that act under the charge and control of the said Director of the National Park Service, is hereby extended to cover the sidewalks around the public grounds and the carriage-ways of such streets as lie between and separate the said public grounds.

Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. § 1;

There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director. The Secretary of the Interior shall appoint the director, and there shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus

established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

Act of August 8, 1953, 67 Stat. 496, 16 U.S.C. § 1 c:

- (a) The term "National Park System" means all federally owned or controlled lands which are administered under the direction of the Secretary of the Interior in accordance with the provisions of sections 1 and 2-4 of this title, and which are grouped into the following descriptive categories:
- (1) National Parks,
 - (2) national monuments,
 - (3) national historical parks,
 - (4) national memorials,
 - (5) national parkways, and
 - (6) national capital parks.

Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. § 2:

The director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments which on August 25, 1916, were under the jurisdiction of the Department of the Interior.

ment of the Interior . . . and of such other national parks and reservations of like character as may be created by Congress . . .

Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. § 3:

The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service . . .

Act of May 26, 1930, 46 Stat. 382, 16 U.S.C. § 17b:

The Secretary of the Interior is authorized to contract for services or other accommodations provided in the national parks and national monuments for the public under contract with the Department of the Interior, as may be required in the Administration of the National Park Service, at rates approved by him for the furnishing of such services or accommodations to the Government and without compliance with the provisions of section 5 of Title 41.

Act of October 9, 1965, 79 Stat. 969, 16 U.S.C. §§ 20, 20a-g:

CONCESSIONS FOR ACCOMMODATIONS, FACILITIES, AND SERVICES IN AREAS ADMINISTERED BY NATIONAL PARK SERVICE

§20. Congressional findings and statement of purpose

In furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended, which directs the Secretary of the Interior to administer national

park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

**§ 20a. Authority of Secretary of the Interior
to encourage concessioners**

Subject to the findings and policy stated in section 20 of this title, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

§ 20b. Protection of concessioner's investment
—Contract terms; compensation for loss of investment

(a) Without limitation of the foregoing, the Secretary may include in contracts for the providing of facilities and services such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment in structures, fixtures improvements, equipment, supplies, and other tangible property provided by him for the purposes of the contract (but not against loss of anticipated profits) resulting from discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective under which acts, policies, or decisions the concessioner's authority to conduct some or all of his authorized operations under the contract ceases or his structures, fixtures, and improvements, or any of them, are required to be transferred to another party or to be abandoned, removed, or demolished. Such terms and conditions may include an obligation of the United States to compensate the concessioner for loss of investment, as aforesaid.

Profit commensurate with capital invested and obligations assumed

(b) The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Reasonableness of concessioner's rates and charges

(c) The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

Determination of franchise fees; reconsideration every five years or oftener

(d) Franchise fees, however stated, shall be determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract or permit involved. Such value is the opportunity for net profit in relation to both gross receipts and capital invested. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates. Appropriate provisions shall be made for reconsideration of franchise fees at least every five years unless the contract is for a lesser period of time.

§ 20c. New or additional services; preferential rights; operations by a single concessioner

The Secretary may authorize the operation of all accommodations, facilities, and services for visitors, or of all such accommodations, facilities, and

services of generally similar character, in each area, or portion thereof, administered by the National Park Service by one responsible concessioner and may grant to such concessioner a preferential right to provide such new or additional accommodations, facilities, or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. The Secretary may, in his discretion, grant extensions, renewals, or new contracts to present concessioners, other than the concessioner holding a preferential right, for operations substantially similar in character and extent to those authorized by their current contracts or permits.

§ 20d. Renewal preference for satisfactory performance; extensions; new contracts; public notice.

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary. To this end, the Secretary, at any time in his discretion, may extend or renew a contract or permit, or may grant a new contract or permit to the same concessioner upon the termination or surrender before expiration of a prior contract or permit. Before doing so, however, and before granting extensions, renewals or new contracts pursuant to the last sentence of section 20c of this title, the Secretary shall give reasonable public notice of his intention so to do and

shall consider and evaluate all proposals received as a result thereof.

§ 20e. Concessioner's possessory interest in concession property; limitations; compensation for taking; determination of just compensation

A concessioner who has heretofore acquired or constructed or who hereafter acquires or constructs, pursuant to a contract and with the approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title, and except as hereinafter provided, which title shall be vested in the United States. Such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture, or improvement in which the concessioner has a possessory interest shall be wholly subject to the applicable provisions of the contract and of laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation. The said possessory interest may be assigned, transferred, encumbered, or relinquished. Unless otherwise provided by agreement of the parties, just compensation shall be an amount equal to the sound value of such structure, fixture, or improvement at the time of taking by the United States determined upon the

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basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The provisions of this section shall not apply to concessioners whose current contracts do not include recognition of a possessory interest, unless in a particular case the Secretary determines that equitable considerations warrant recognition of such interest.

§ 20f. Use or non-monetary consideration in leases of government property

The provisions of section 303b of Title 40, relating to the leasing of buildings and properties of the United States, shall not apply to privileges, leases, permits, and contracts granted by the Secretary of the Interior for the use of lands and improvements thereon, in areas administered by the National Park Service, for the purpose of providing accommodations, facilities, and services for visitors thereto, pursuant to the Act of August 25, 1916 (39 Stat. 535), as amended, or the Act of August 21, 1935, chapter 593 (49 Stat. 666), as amended.

§ 20g. Record keeping; audit and examination; access to books and records

Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other

books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years, after the close of the business year of each concessioner or subconcessioner have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner or subconcessioner related to the negotiated contract or contracts involved.